

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.MC.No. 2304 of 2007(Y)

CRIME NO.332 OF 2007 OF THE HARBOUR POLICE STATION

PETITIONER:

MR.ERVIN SHIJAKU, CEO & PRESIDENT,
DEA SHIPPING & FORWARDING, MAJURO STREET,
MARSHALL ISLAND, NOW AT COCHIN AND CONTACT
ADDRESS THROUGH AGENT KINSHIP SERVICES PVT.LTD,
W/ISLAND, COCHIN-9.

BY ADV. SRI.V.J.MATHEW
SRI.BIJISH B.TOM

RESPONDENTS:

1. SUB INSPECTOR OF POLICE, HARBOUR
POLICE STATION, W/ISLAND, COCHIN-3.
2. COMMISSIONER OF POLICE, COCHIN CITY,
ERNAKULAM.
3. STATE OF KERALA, REP. BY ITS SECRETARY,
HOME DEPT.
4. DY.CONSERVATOR, COCHIN PORT TRUST,
W/ISLAND, COCHIN - 9.
5. THE BOARD OF TRUSTEES,
COCHIN PORT TRUST, W/ISLAND,
COCHIN-9, REP. BY ITS CHAIRMAN.

BY ADV. SRI.A.M.SHAFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
D.G.P SRI.P.G.THAMBI FOR RESPONDENTS 1 TO 3

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.2304 of 2007

Dated this the 17th day of August, 2007

O R D E R

The petitioner is the Chief Executive Officer and President of Dea Shipping and Forwarding, Marshall Island. He is now at Cochin. He has come to Cochin in connection with the actions necessary consequent to sinking of a ship by name M.V.Maria S belonging to his company. He is aggrieved by the registration of Annexure-A5 F.I.R (Crime No.332 of 2007) of the Cochin City Harbour Police Station. The said crime has been registered against the petitioner and others under Section 5 of the Foreigners Order, 1948. That F.I.R in turn is registered on the basis of a complaint filed before the learned C.J.M, Ernakulam by the Cochin Port Trust represented by its Deputy Conservator. Four persons are shown as respondents in the said complaint. Respondents 1 and 2 are the Sub Inspector of Harbour Police Station and the Commissioner of Police, Cochin City. The 3rd respondent is the petitioner herein and the 4th respondent is the Master of the Vessel which had sunk.

2. The short contention raised by the petitioner is that the F.I.R in so far as it relates to the petitioner is certainly liable to be quashed as no cognizable offence is even alleged against the

petitioner. The petitioner contended that the proceedings are vexatious and are initiated against him with ulterior motives. Because of registration of the said crime and the pendency of investigation, the petitioner apprehends that his right to move out of India may be affected. He, in these circumstances, prays that the F.I.R registered in so far as it relates to him may be quashed by this Court invoking the powers under Section 482 Cr.P.C.

3. Notice was given to the respondents. Respondents 1 to 3 have entered appearance through the Director General of Prosecution. Respondents 4 and 5 had entered appearance through their counsel. Arguments have been heard.

4. Clause 5 of the Foreigners Order, 1948 is only an embargo against a foreigner leaving India without complying with certain formalities. Clause 5(1) mandates that no foreigner shall leave India except under clauses (a) & (b) of the said sub section. Clause 5(2) enumerates the circumstances under which permission to leave India can be refused. There is no allegation whatsoever that the petitioner has committed violation of the provisions of Clause 5 of the Foreigners Order.

5. Detailed arguments were heard. The learned Director General of Prosecution for the State (respondents 1 to 3) and the

learned counsel for the defacto complainant - Cochin Port Trust (Respondents 4 & 5) were requested to pointedly explain how it can be said that the petitioner has committed any cognizable offence justifying or warranting registration of a crime against the petitioner. The learned Director General of Prosecution submitted at the first instance itself that he is unable to find any cognizable offence allegedly committed by the petitioner which would justify registration of a crime against the petitioner. Respondents 4 and 5 took a long time. The counsel who appeared initially does not appear any longer. Another counsel has appeared. It is made clear by the counsel appearing now that there is no specific allegation raised which would justify the registration of a crime against the petitioner herein. The counsel submits that Central Government is seized of the matter and it cannot be ruled out that the petitioner may be responsible for commission of offences under the provisions of the Merchant Shipping Act.

6. Be that as it may, the fact remains that there is no justification at the moment for registration of Annexure-A5 crime against the petitioner herein. The defacto complainant or the State are unable to show to this Court any material to show that the petitioner has committed any offence justifying or warranting the registration of a crime against him. It follows from the above

discussions that Annexure-A5 F.I.R registered on the basis of Annexure-A4 complaint in so far as it relates to the petitioner is liable to be quashed.

7. This Crl.M.C is accordingly allowed. Crime No.332 of 2007 of Harbour Police Station in so far as it relates to the petitioner herein is hereby quashed.

8. The learned counsel for respondents 4 and 5 submits that this order may not stand in the way of any future proceedings being initiated against the petitioner for any offence which he may later be found to have committed. Needless to say that this order is limited in its operation to the quashing of Annexure-A5 F.I.R.

Hand over a copy of this order to the learned counsel for the petitioner itself.

(R.BASANT, JUDGE)

rtr/-

